



PUBLIC NOTICE

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COMMISSION SEEKS TO UPDATE THE RECORD FOR A PETITION FOR RECONSIDERATION REGARDING HOME SHOPPING STATIONS

MM Docket No. 93-8

Comment Date: [30 days after publication in the Federal Register]

Reply Comment Date: [45 days after publication in the Federal Register]

1. In this Public Notice, the Commission seeks to update the record for a Petition for Reconsideration of its *Report and Order* in MM Docket No. 93-8,¹ concerning stations that air home shopping programming and their status under section 4(g) of the Cable Television Consumer Protection and Competition Act of 1992.² In the *Report and Order*, the Commission concluded that television broadcast stations that are used predominantly for the transmission of sales presentations or program length commercials (such as home shopping stations) serve the public interest and are therefore qualified for mandatory cable carriage. The Center for the Study of Commercialism (CSC) filed a petition for reconsideration of that order.³ We issue this Public Notice because the Commission would like to update the record for this proceeding before ruling on the petition.

2. On January 14, 1993, the Commission opened a proceeding to implement section 4(g) of the Cable Act of 1992.⁴ The Cable Act requires the Commission to determine, regardless of prior proceedings, whether home shopping broadcast stations are serving the public interest, convenience, and necessity.⁵ Pursuant to this provision, if the Commission finds that these stations serve the public interest, it must qualify them as local commercial television stations for the purposes of mandatory cable carriage, or must-carry.⁶ The Cable Act further provides that the Commission consider three factors in making its

¹ *Implementation of Section 4(g) of the Cable Television Consumer Protection and Competition Act of 1992, Home Shopping Station Issues*, MM Docket No. 93-8, *Report and Order*, 8 FCC Rcd 5321 (1993) (*Report and Order*).

² Pub. L. No. 102-385, 106 Stat. 1460 (1992) (Cable Act)

³ Petition for Reconsideration filed by Center for the Study of Commercialism, MM Docket No. 93-8, filed August 23, 1993 (Petition for Reconsideration).

⁴ *Notice of Proposed Rulemaking*, 8 FCC Rcd 660 (1993).

⁵ That section of the Cable Act added a new section 614(g) to the Communications Act of 1934, as amended, 47 U.S.C. § 534(g). 47 U.S.C. § 534(g)(2).

⁶ *Id.* If the Commission found that one or more such stations did not serve the public interest, then the Act required the Commission to provide them with reasonable time to provide different programming. *Id.*

public interest determination: "the viewing of home shopping stations, the level of competing demands for the spectrum allocated to such stations, and the role of such stations in providing competition to nonbroadcast services offering similar programming."⁷

3. In the *Report and Order*, the Commission noted that the overwhelming majority of commenters in the proceeding contended that home shopping stations do serve the public interest,⁸ that their programming format should not adversely affect their renewal expectancy,⁹ and that they should be eligible for must-carry status.¹⁰ Addressing the first of the three factors enumerated in Section 4(g), the Commission found that home shopping stations have significant viewership.¹¹ With respect to the second factor, the Commission found that it must consider the demands only of other television broadcasters and not the demands of services other than broadcast television.¹² The Commission further found that the licensing process adequately took into account the competing demands of television broadcasters for the television broadcast spectrum.¹³ Finally, turning to the third factor, the Commission found that the existence and carriage of home shopping broadcast stations play a role in providing competition for nonbroadcast services supplying similar programming.¹⁴ Thus, the Commission found that each of the three statutory factors supported a conclusion that home shopping stations are serving the public interest.

4. In addition, the Commission found that other factors, including the following, supported its conclusion: (1) home shopping stations provide a needed and valuable service to people without the time or ability to obtain goods outside the home, including the disabled, elderly, and homebound; (2) home shopping stations fulfill public interest programming obligations; (3) the role played by the Home Shopping Network in assisting minority-controlled and other small and marginal stations to attain financial viability; and (4) lack of evidence that the marketplace had failed to serve television viewers based on the then-present number and variety of home shopping services.¹⁵ Accordingly, the Commission concluded that home shopping stations serve the public interest, and it therefore qualified them as local commercial television stations for the purposes of mandatory cable carriage.¹⁶

5. CSC argues that (1) the Commission did not consider the amount of the commercial

⁷ *Id.*

⁸ *Report and Order*, 8 FCC Rcd at 5327.

⁹ *Id.*

¹⁰ *Id.* at 5335.

¹¹ *Id.* at 5322.

¹² *Id.* at 5323.

¹³ *Id.* at 5322-23.

¹⁴ *Id.* at 5323-26.

¹⁵ *Id.* at 5327-28.

¹⁶ Additionally, on October 7, 1993, the Commission, on its own motion, released a *Notice of Inquiry* to evaluate the commercial programming practices of the television broadcast stations. Specifically, it sought comment on whether the public interest would be served by establishing limits on the amount of commercial matter broadcast by television stations. *Limitations on Commercial Time on Television Broadcast Stations*, MM Docket No. 93-254, *Notice of Inquiry*, 8 FCC Rcd 7277.

programming home shopping stations broadcast when it concluded that such stations discharge their obligation to broadcast programming that is in the public interest;¹⁷ and (2) the Commission did not consider information relevant to the second of the three factors in section 4(g) relating to competing uses for the television broadcast spectrum.¹⁸

6. In order to update our records for this proceeding, we seek comment on the issues presented in the petition for reconsideration filed by CSC. CSC argues that the Commission failed to consider in its public interest analysis the significant amount of commercial programming broadcast by home shopping stations.¹⁹ We seek comments on this assertion. Additionally, in order to update the record, we're now seeking comment on the specific issues concerning how home shopping stations serve the people in their communities, including the elderly and homebound.

7. We also seek comment on CSC's assertion that the Commission failed to consider information relevant to the second statutory factor, *i.e.*, competing demands for the spectrum.²⁰ Specifically, CSC claims that the Commission failed to consider evidence regarding Congressional intent that the Commission consider non-broadcast uses for the television broadcast spectrum, such as those of police and fire departments.²¹ We seek comment on CSC's assertion that the Cable Act requires the Commission to consider non-broadcast uses in its analysis of competing demands for spectrum.

8. Finally, given the passage of time since the *Report and Order* was adopted, we seek comment on the current number of broadcast stations that provide home shopping programs for the majority of their broadcast day. How do home shopping stations meet their public interest obligations? In particular, how do they comply with the requirements of the Children's Television Act of 1990²² and licensees' obligation to provide coverage of issues facing their communities?²³

9. *Ex Parte Rules.* This proceeding will be treated as a "permit-but-disclose" proceeding subject to the "permit-but-disclose" requirements under section 1.1206(b) of the Commission's rules.²⁴ *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed.

¹⁷ Petition for Reconsideration at 2-6.

¹⁸ *Id.* at 9-11. CSC also argues that the Commission improperly relied on *ex parte* communications. *Id.* at 8-9. We note that the *ex partes* to which CSC refers are not contained in the record. Accordingly, when we revisit these issues on reconsideration, we will not rely on those *ex parte* communications.

¹⁹ Petition for Reconsideration at 2-6.

²⁰ *Id.* at 9-11.

²¹ Petition for Reconsideration at 9-11.

²² Children's Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, codified at 47 U.S.C. §§ 303a, 303b, 394.

²³ See 47 C.F.R. §§ 73.3526(e)(11); Deregulation of Radio, 84 FCC.2d 968, 982 (1981).

²⁴ See 47 C.F.R. § 1.1206(b); see also 47 C.F.R. §§ 1.1202, 1.1203.

More than a one- or two-sentence description of the views and arguments presented is generally required.²⁵ Additional rules pertaining to oral and written presentations are set forth in section 1.1206(b).

10. Pursuant to Sections 1.415 and 1.419 of the Commission's rules,²⁶ interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. **All filings must be submitted in MM Docket No. 93-8.** Pleadings sent via e-mail to the Commission will be considered informal and will not be part of the official record. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.²⁷

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
 - For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal service mailing address, and the applicable docket number: CS Docket No. 97-80. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message: "get form". A sample form and instructions will be sent in response.
- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
 - U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554.
- **People with Disabilities:** To request materials in accessible formats for persons with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or contact the Consumer and Governmental Affairs Bureau at (202) 418-0530 or (202) 418-7365 (TTY).

²⁵ See 47 C.F.R. § 1.1206(b)(2).

²⁶ 47 C.F.R. §§ 1.415 and 1.419.

²⁷ See *Electronic Filing of Documents in Rulemaking Proceedings*, 13 FCC Rcd 11322, 11326, ¶ 8 (1998).

- Copies of any filed documents in this matter are also available for inspection in the Commission's Reference Information Center:

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11. For further information, contact Belinda Nixon of the Media Bureau, (202) 418-1382. Press inquiries should be directed to Mary Diamond of the Media Bureau, (202) 418-2388. TTY: (202) 418-7172 or (888) 835-5322.